

Not for Publication

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

HOWARD SPIALTER, BALDWIN MANOR,
LP, SEAN HENDELMAN, BRANDYCE
HENDELMAN, WB CAPITAL, LLP, DAVID
ABRAMSON, and DAVID LAWRENCE,
M.D., P.C.

Plaintiffs,

v.

MICHAEL L. MILLMAN, NUTMEG
BENEFIT GROUP, LLC, AFFILIATED
FINANCIAL PARTNERS, LLC, MICHAEL L.
MILLMAN, LTD., RONALD K. RUBIN, MSL
FINANCIAL GROUP, LLC, LINCOLN
FINANCIAL GROUP, THE LINCOLN
NATIONAL LIFE INSURANCE COMPANY,
and STEVEN A. HOLT,

Defendants.

Civ. Action No. 09-5611

OPINION and ORDER

Katharine S. Hayden, U.S.D.J.

This matter having come before the Court upon the Report and Recommendation of Magistrate Judge Schwartz [D.E. 27] filed on March 30, 2010, recommending that plaintiffs' complaint [D.E. 1, Exh. A] be remanded to the New Jersey Superior Court, Union County; and this Court having reviewed and considered the issues therein; and it appearing that defendants failed to obtain written evidence of the timely consent to removal of all defendants, including defendants Ronald K. Rubin ("Rubin") and MSL Financial Group, LLC ("MSL"), as required by 28 U.S.C. 1446(a) for removal of diversity or federal question jurisdiction cases; and it appearing that the fraudulent joinder exception to the unanimous consent rule is not implicated because

plaintiffs allege “colorable” claims against defendants Rubin and MSL under 29 U.S.C. 1002(21)(A) of the Employee Retirement Income Security Act (“ERISA”) and under state law for breach of fiduciary duty in their actions before and after the welfare benefit plans at issue were established; and the Court noting that neither party has objected to the magistrate judge's report and recommendation and that there is no clear error on the face of the record, *see Nara v. Frank*, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”),

It is on this 26th day of April, 2010 hereby

ORDERED that the Report and Recommendation of Magistrate Judge Shwartz is adopted and incorporated as the opinion of this Court; and it is further

ORDERED that plaintiffs’ complaint is remanded to the New Jersey Superior Court, Union County; and it is further

ORDERED that the pending motion to dismiss [D.E.8] is terminated from this Court’s docket, and may be brought to the attention of the state court for disposition.

/s/ Katharine S. Hayden

Katharine S. Hayden, U.S.D.J.